

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Team # 2	CCRB Case #: 201301738	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 03/04/2013 9:22 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 9/4/2014	Precinct: 41
Date/Time CV Reported Thu, 03/07/2013 2:33 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/15/2013 2:33 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ahsan Zafar	03773	949822	041 PCT
2. POM Victor Marrero	20392	945234	041 PCT
3. POM Carlos Cruz	03361	948830	041 PCT
4. POM Elvis Badia	14241	948635	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Cornier	01615	932492	041 PCT
2. POM Homer Henriquez	02725	949097	041 PCT
3. POM Scott Berger	10210	948659	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Victor Marrero	Force: PO Victor Marrero used a chokehold against § 87(2)(b)	
B . POM Victor Marrero	Force: PO Victor Marrero used physical force against § 87(2)(b)	
C . POM Ahsan Zafar	Force: PO Ahsan Zafar used physical force against § 87(2)(b)	
D . POM Elvis Badia	Force: PO Elvis Badia used physical force against § 87(2)(b)	
E . POM Carlos Cruz	Force: PO Carlos Cruz used physical force against § 87(2)(b)	

Case Summary

On March 4, 2013, Sgt. Joseph Cornier of the 41st Precinct filed this complaint on behalf of § 87(2)(b) (encl. 3A-B). It was received via log number 14-09421 on March 15, 2013 (encl. 4A-C). On March 9, 2013, § 87(2)(b) filed this complaint with IAB by telephone on behalf of § 87(2)(b) who is his brother (encl. 5A-D). § 87(2)(b) did not witness the incident. It was received at the CCRB via log numbers 13-10410 and 13-10583. On March 4, 2013, the 41st Precinct Conditions team arrested § 87(2)(b) at § 87(2)(b) in the Bronx. The following allegations resulted:

- **Allegation A – Force: PO Victor Marrero used a chokehold against** § 87(2)(b)
- **Allegation B – Force: PO Victor Marrero used physical force against** § 87(2)(b)
- **Allegation C – Force: PO Ahsan Zafar used physical force against** § 87(2)(b)
- **Allegation D – Force: PO Elvis Badia used physical force against** § 87(2)(b)
- **Allegation E – Force: PO Carlos Cruz used physical force against** § 87(2)(b) § 87(2)(g)

Case number § 87(2)(b) was closed as a duplicate of this complaint.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 5'8" tall, weighs 170 pounds, and has black hair and brown eyes. § 87(2)(b)

Statements to Medical Personnel (see medical records)

On § 87(2)(b), § 87(2)(b) reported to EMTs that he was punched in the face while being arrested. At § 87(2)(b) § 87(2)(b) reported that officers beat him up and that they tried to strangle him. He stated that he was smoking marijuana when police came and grabbed him by the neck and punched him in the face, neck, chest, abdomen, and back. He denied loss of consciousness and respiratory distress, but complained of pain to the left side of his face, neck, and lower back. On § 87(2)(b), § 87(2)(b) informed § 87(2)(b) staff that he was involved in an altercation with police two days prior and sustained bruises to his left forearm and flank.

Arrest Photo (encl. 12)

No injuries are visible in § 87(2)(b)'s arrest photo.

Photos of Injuries (encl. 11A-D)

Photos of § 87(2)(b)'s arm taken by his § 87(2)(b) attorney when § 87(2)(b) was arraigned show a bruise on his upper arm.

CCRB Testimony, IAB Statement, and 50H Testimony

On March 9, 2013, IAB Sergeant Eduardo Pena interviewed § 87(2)(b) (encl. 6A-D). On March 21, 2013, § 87(2)(b) provided a telephone statement (encl. 7A). On May 1, 2013, § 87(2)(b)

was interviewed at the CCRB (encl. 7B-I). On June 6, 2013, § 87(2)(b) provided additional information by telephone (encl. 9). On § 87(2)(b), § 87(2)(b) testified at a 50H hearing (encl. 10A-CCC). § 87(2)(g)

On March 4, 2013, at 9:22 p.m., § 87(2)(b) was in the stairwell of § 87(2)(b) in the Bronx, between the fifth and sixth floors. The building is six stories tall. He had been there for 10 to 20 minutes rolling a marijuana cigarette. He did not do anything else while in the stairwell and was alone the entire time. While he was still rolling the cigarette, five to seven officers, known through investigation to be PO Ahsan Zafar, PO Elvis Badia, PO Carlos Cruz, PO Victor Marrero, PO Scott Berger, PO Homer Henriquez, and Sgt. Joseph Cornier of the 41st Precinct ran down from the roof. § 87(2)(b) described PO Marrero as a short, bald, Hispanic man and PO Cruz as a tall, slim, possibly white man.

PO Marrero immediately grabbed § 87(2)(b) in a chokehold with PO Marrero's arm across and around § 87(2)(b)'s throat from behind. PO Marrero pulled him up by the neck and, with a second officer § 87(2)(b) could not describe, "slammed" him face down on the floor; they were still on the steps. § 87(2)(b) later stated that only PO Marrero was involved in taking § 87(2)(b) to the ground. § 87(2)(b)'s breathing was slightly restricted but he was still able to yell. § 87(2)(b) later added that PO Marrero also put his hand over his mouth in an attempt to muffle § 87(2)(b)'s screams. § 87(2)(b) was not in a chokehold for very long, though he did not put a specific time on how long. § 87(2)(b) moved his head around and got out of the chokehold, though he later stated that PO Marrero did not remove his arm from § 87(2)(b)'s neck until the officers started to stand him up after he was in handcuffs. He screamed for help and for his mother. When § 87(2)(b) screamed louder, PO Marrero told him to shut up. Officers who § 87(2)(b) could not see handcuffed him. PO Marrero, PO Cruz, and an unknown number of additional officers kicked and punched § 87(2)(b) in the ribs. Initially, § 87(2)(b) stated that the officers punched him in the face, but later stated that he was not punched in the face until he was in the police van. § 87(2)(b) also later stated that the officers picked him up as soon as he was in handcuffs. § 87(2)(b) moved his upper body around in an attempt to get out of PO Marrero's grip but had difficulty moving because he was already in handcuffs. § 87(2)(b) was not moving his legs. § 87(2)(b) screamed the entire time. § 87(2)(b) and all of the officers were on the same step. § 87(2)(b) did not mention the chokehold in his IAB statement.

A neighbor, known through investigation to be § 87(2)(b) came into the stairwell. § 87(2)(b) was already standing up. Officers yelled at § 87(2)(b) to get back into his apartment. § 87(2)(b)'s mother, § 87(2)(b) also started to walk up the stairs. Officers "shoved" her back into her apartment, but § 87(2)(b) did not know how they did so. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)'s step-father, § 87(2)(b) also tried to go up the stairs and was told that he could not. § 87(2)(b)'s sister, § 87(2)(b) also tried to come upstairs and officers told her that if she did, she would be handcuffed as well.

PO Marrero and another officer § 87(2)(b) could not describe picked § 87(2)(b) up and brought him to the sixth floor elevator. § 87(2)(b) said that everything happened very quickly and could not say how long he was on the ground. § 87(2)(b) and all of the officers took the elevator down to the lobby. In his telephone statement, § 87(2)(b) made additional allegations of physical force that occurred in the elevator, but he never repeated these allegations during his sworn statement. § 87(2)(a) Gen.Mun. §50-H(3)

Four to six officers took § 87(2)(b) to the police van. He was placed in the police van in the second row while PO Cruz sat in the first row. There were no other civilians in the van. PO Cruz put on gloves and punched § 87(2)(b) in his right eye, causing swelling to his eye. § 87(2)(b) ducked his head to avoid being hit in the face again. PO Cruz punched § 87(2)(b) in the head several times. PO Cruz asked § 87(2)(b) if he wanted to fight him. § 87(2)(b) was angry, so he told PO Cruz that he did want to fight him. § 87(2)(a) Gen.Mun. §50-H(3) in his

Hispanic male with glasses and a tall Hispanic male with a heavy build, respectively, grabbed § 87(2)(b) by the arm and tried to push her back into her apartment by her arm. Sgt. Cornier and PO Henriquez also told § 87(2)(b) to go back inside and pushed him with open hands. § 87(2)(b) daughter, § 87(2)(b) started to go up the stairs and argued with the officers, who would not let her. PO Henriquez told § 87(2)(b) “Shut up before you get arrested.” § 87(2)(b) did not see what happened with § 87(2)(b) on the sixth floor.

Photo Viewing (encl. 15A-H)

On May 1, 2013, § 87(2)(b) viewed photos of the Conditions team at the CCRB. § 87(2)(b) did not recognize any of the officers as subjects of the allegations. She noted that she was not wearing her glasses at the time of the incident.

Witness: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b) daughter and resides with § 87(2)(b)

Telephone Statement

On May 16, 2013, § 87(2)(b) provided a telephone statement (encl. 17). § 87(2)(g)

§ 87(2)(b) was coming home after shopping and was on the elevator when she heard screaming. § 87(2)(b) told her to help § 87(2)(b). She went into the stairwell and observed § 87(2)(b) in handcuffs on the sixth floor. She tried to go up to him but officers brought her back downstairs. An officer pushed § 87(2)(b) into her apartment.

§ 87(2)(b) went downstairs and got there as § 87(2)(b) and the officers were getting out of the elevator. § 87(2)(b) was crying and told § 87(2)(b) that the officers had punched him while he was in the elevator. § 87(2)(b) did not observe this.

Witness: § 87(2)(b)

- § 87(2)(b) 54 years old at the time of the incident, is § 87(2)(b) husband.

Telephone Statement

On April 19, 2013, § 87(2)(b) provided a telephone statement (encl. 16). § 87(2)(g)

§ 87(2)(b) was in his bedroom when § 87(2)(b) came in and said that something was happening to § 87(2)(b). § 87(2)(b) went outside and saw § 87(2)(b) on the stairs. § 87(2)(b) was on the stairs one flight up from the apartment on his back and a 6’ tall, 190 pound while male officer had his knee on § 87(2)(b)’s chest. PO Henriquez and Sgt. Cornier would not allow § 87(2)(b) to go upstairs to § 87(2)(b). Two officers pushed § 87(2)(b) back into his apartment. Officers took § 87(2)(b) to the elevator.

Witness: § 87(2)(b)

- § 87(2)(b) resides on the § Floor of § 87(2)(b)

Telephone Statement

On July 12, 2013, § 87(2)(b) provided a telephone statement (encl. 18). § 87(2)(g)

§ 87(2)(b)’s apartment is between the stairwell and the elevator. The fire door to the stairwell was propped open. § 87(2)(b) heard a loud “ow” from the stairwell and heard § 87(2)(b) ask the officers why they were doing this and say that he was not resisting. § 87(2)(b) 2) § 87(2)(b) opened the door to his apartment. The officers had § 87(2)(b) against the wall in manner § 87(2)(b) § 87(2)(b) could not see because the officers were blocking his view. § 87(2)(b) was handcuffed and two officers appeared to be pressing him against the wall. Sgt. Cornier and another officer ran

around the hallway to see who else was in the hallway. § 87(2)(b) came out of her apartment.

§ 87(2)(b) said that the officers were tightening the handcuffs and hitting him and that he had not run from the officers. Sgt. Cornier told § 87(2)(b) to go back in his apartment. Eventually, the officers brought § 87(2)(b) into the elevator. From inside his apartment, § 87(2)(b) heard officers slam § 87(2)(b) against the walls of the elevator.

Attempts to Contact Civilians

§ 87(2)(b) identified § 87(2)(b) -old § 87(2)(b) as a potential witness and stated that she would speak with § 87(2)(b) § 87(2)(b) father, as to whether she could provide a statement. On July 5, 2013, a letter was mailed to § 87(2)(b) in regards after he failed to contact the CCRB after April 19, 2013, and missed a tentatively scheduled appointment for April 26, 2013. Neither § 87(2)(b) nor § 87(2)(b) provided permission to speak to § 87(2)(b) and thus she was not contacted.

NYPD Statements

Subject Officer: PO AHSAN ZAFAR

- *PO Zafar, § 87(2)(b) old at the time of the incident, is an Asian man who stands 5'9" tall, weighs 190 pounds, and has black hair and brown eyes.*
- *On March 4, 2013, PO Zafar worked from 2 p.m. to 11:35 p.m. He was assigned to a Conditions post and was working with the Conditions team. He was in uniform and was not assigned to a motor vehicle, though he was picked up by other officers during his tour.*

Memo Book (encl. 19B-D)

At 9:15 p.m., PO Zafar conducted a vertical patrol at § 87(2)(b). At 9:17 p.m., he stopped § 87(2)(b) on the 5th floor and at 9:22 p.m., § 87(2)(b) was under arrest for § 87(2)(b).

Complaint Report, Arrest Report, and Criminal Court Complaint (encl. 20A-G)

§ 87(2)(a) 160.50

CCRB Testimony (encl. 21A-D)

On October 18, 2013, PO Zafar was interviewed at the CCRB.

On March 4, 2013, at 9:15 p.m., PO Zafar and the conditions team consisting of Sgt. Cornier, PO Henriquez, PO Marrero, PO Cruz, PO Badia, and PO Berger conducted a vertical patrol of § 87(2)(b) in the Bronx. They walked down the stairwell from the roof of the building. On the small landing between the 4th and 5th floors, PO Zafar observed § 87(2)(b) sitting on a stair, rolling a marijuana cigarette. When § 87(2)(b) saw PO Zafar, § 87(2)(b) threw the marijuana on the floor and tried to step on it. PO Zafar and one other officer who PO Zafar could not remember grabbed § 87(2)(b)'s arms. § 87(2)(b) tried to stand up using his legs and tried to pull his body away from § 87(2)(b). PO Zafar feared that § 87(2)(b) would push him down the stairs. PO Zafar pushed down on the right side of § 87(2)(b)'s back while holding his right arm. PO Zafar was not sure if § 87(2)(b) ever made contact with the ground. No officer put § 87(2)(b) in a chokehold or made contact with § 87(2)(b)'s neck. It was possible that while restraining § 87(2)(b) an officer had his arm wrapped around § 87(2)(b). PO Zafar did not punch or kick § 87(2)(b) or see any officer do so.

§ 87(2)(b) called for his mother. § 87(2)(b) and § 87(2)(b) approached the scene after § 87(2)(b) was in handcuffs. § 87(2)(b) became irate and told the officers that § 87(2)(b) had surgery for a hernia. PO Zafar told § 87(2)(b) to go back to his apartment and to go to the

stationhouse for information. PO Zafar did not see Sgt. Cornier or any other officer push any civilians.

PO Zafar escorted § 87(2)(b) to the elevator with other officers but did not ride with them because the elevator was too small. PO Zafar did not recall who rode the elevator. PO Zafar did not remember whether he saw § 87(2)(b) outside of the building. He did not recall if all of the officers left the scene at the same time.

PO Zafar saw § 87(2)(b) again at the stationhouse when he obtained pedigree information. He did not put § 87(2)(b) in a holding cell. PO Zafar did not see any injuries on § 87(2)(b) § 87(2)(b) complained of pain from a prior surgery for a hernia. EMS was called for him. § 87(2)(b) was not taken to the hospital in regards to any new injuries. PO Zafar was not aware that § 87(2)(b) had two fractured ribs, bruising near his lungs, or abrasions to his arm or forehead.

Subject Officer: PO ELVIS BADIA

- *PO Badia, § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 5'7" tall, weighs 150 pounds, and has black hair and brown eyes.*
- *On March 4, 2013, PO Badia worked from 2 p.m. to 10:35 p.m. He was assigned to the Conditions team, was in uniform, and was assigned to an unmarked vehicle.*

Memo Book (encl. 31B-E)

At 9:15 p.m., PO Badia conducted a vertical patrol at § 87(2)(b) At 9:17 p.m., he stopped § 87(2)(b) At 9:22 p.m., PO Zafar arrested § 87(2)(b)

CCRB Testimony (encl. 32A-C)

On November 13, 2013, PO Badia was interviewed at the CCRB. § 87(2)(g)

PO Zafar and PO Badia walked down one of the stairwells and then across one of the floors to the opposite stairwell. The door to the stairwell was open and PO Badia observed § 87(2)(b) rolling a marijuana cigarette on the stairs. PO Badia and PO Zafar approached § 87(2)(b) and § 87(2)(b) threw the marijuana to the ground. The marijuana was later recovered by himself or PO Zafar. § 87(2)(b) pulled his arms away from the officers. The other officers on the team heard the commotion caused by § 87(2)(b) PO Badia, and PO Zafar and came down the stairs. When they arrived, § 87(2)(b) was not in handcuffs. All of the additional officers assisted in handcuffing § 87(2)(b) § 87(2)(b) yelled for his mother but there were no civilians on the stairs. § 87(2)(b) did not complain of any injuries. No officer punched or kicked § 87(2)(b) PO Badia did not see § 87(2)(b)'s chest hit the floor or a wall. PO Badia and PO Zafar walked § 87(2)(b) down the stairs to the lobby. The other officers followed down the stairs behind them. PO Badia heard people coming out of the apartments. He did not see any other officer push any civilian or threaten to arrest them.

PO Badia did not see any officer punch § 87(2)(b) in the van. He did not observe any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any injuries. He was not aware that § 87(2)(b) had fractured ribs or bruising near his lungs.

Subject Officer: PO VICTOR MARRERO

- *PO Marrero, § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 5'5" tall, weighs 163 pounds, is bald and has brown eyes.*
- *On March 4, 2013, PO Marrero worked from 2 p.m. to 10:35 p.m. He was assigned to the Conditions team, was in uniform, and was assigned to a marked van.*

Memo Book (encl. 29B-D)

At 9:17 p.m., § 87(2)(b) was stopped and at 9:22 p.m., he was under arrest. § 87(2)(b) resisted. PO Marrero transported § 87(2)(b) to the command.

CCRB Testimony (encl. 30A-D)

On October 23, 2013, PO Marrero was interviewed at the CCRB. § 87(2)(g)

The officers split up and walked down the two staircases of the location. PO Zafar and PO Badia were the first officers to reach § 87(2)(b). PO Marrero and PO Henriquez came down the other staircase. PO Marrero heard a commotion and went to the staircase where § 87(2)(b). PO Zafar, and PO Badia were located. PO Marrero heard PO Zafar and PO Badia telling § 87(2)(b) to stand up. He did not hear § 87(2)(b) saying anything. It did not sound like a physical interaction. § 87(2)(b) was partially seated when PO Marrero arrived. PO Marrero smelled marijuana when he entered the stairwell. PO Zafar and PO Badia had § 87(2)(b) by the arms and were trying to pull him into a standing position. At this time, PO Henriquez, PO Cruz, PO Berger, and Sgt. Cornier were also in the stairwell. PO Marrero did not assist in the arrest at any point while in the staircase. He did not recall any other officer assisting PO Zafar and PO Badia. PO Marrero did not see who handcuffed § 87(2)(b). PO Marrero watched the elevator to see if there was someone with § 87(2)(b). It took several minutes to handcuff § 87(2)(b) because he was resisting. § 87(2)(b) tried to remain seated while PO Zafar and PO Badia tried to stand him up. He also refused to put his hands behind his back and stiffened his arms and held them to his sides when they tried to handcuff him. § 87(2)(b) was never lying on the ground. § 87(2)(b) yelled for his mother. PO Marrero did not punch or kick § 87(2)(b) and did not observe any other officer do so.

When § 87(2)(b) stood up, he was already in handcuffs. There were no other civilians in the stairwell. PO Marrero heard an apartment door on the floor below open. He did not hear anyone say anything from downstairs. He did not see § 87(2)(b)'s mother in the stairwell. PO Marrero did not see any officer conducting crowd control. He did not hear any officer threaten to arrest any civilian. No officer made any contact with any civilian other than § 87(2)(b).

Officers brought § 87(2)(b) up to PO Marrero and PO Henriquez, who then escorted him to the elevator and took him downstairs. No one on that floor opened their apartment door. PO Marrero held § 87(2)(b) by the arm. He did not make any contact with § 87(2)(b)'s neck or have his arm around § 87(2)(b)'s torso or face. He did not observe any other officer do so. § 87(2)(b) never indicated that his breathing was restricted or that he was having difficulty breathing. § 87(2)(b) had quieted down once in handcuffs and was compliant in the elevator.

PO Marrero and PO Henriquez put § 87(2)(b) in the back seat of their van. PO Cruz assisted them. PO Marrero drove the van to the stationhouse. § 87(2)(b) did not resist getting into the van. There were no other civilians in or around the van. PO Marrero did not punch § 87(2)(b) and did not see any other officer do so. PO Marrero did not bring § 87(2)(b) into the stationhouse and had no further interaction with him after he was taken out of the van. PO Zafar took the arrest.

§ 87(2)(b) never complained of any injuries. PO Marrero did not recall seeing the redness or bruise to § 87(2)(b)'s face noted in the command log. PO Marrero did not see § 87(2)(b)'s face or head make contact with anything. PO Marrero did not see any abrasions on § 87(2)(b)'s arm or forehead. He was not aware that § 87(2)(b) had fractured ribs.

Subject Officer: PO CARLOS CRUZ

- PO Cruz, § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 6'1" tall, weighs 248 pounds, and has black hair and brown eyes. He wears glasses at all times.
- On March 4, 2013, PO Cruz worked from 2 p.m. to 11:55 p.m. He was assigned to the Conditions team with PO Berger. He was in uniform and assigned to a marked RMP.

Memo Book (encl. 27B-D)

At 9:15 p.m., PO Cruz conducted a vertical at § 87(2)(b) with PO Zafar, PO Henriquez, Sgt. Cornier, PO Badia, and PO Berger. He was on the roof when § 87(2)(b) started

screaming and resisting with the other officers. At 9:22 p.m., § 87(2)(b) was under arrest by PO Zafar. PO Cruz took § 87(2)(b) to the van and transported him to the stationhouse. At 10:30 p.m., PO Cruz took § 87(2)(b) to § 87(2)(b)

CCRB Testimony (encl. 28A-D)

On October 16, 2013, PO Cruz was interviewed at the CCRB. § 87(2)(g)

PO Cruz and PO Berger were on the roof while the team went down one of the two flights of stairs to the building. PO Cruz and PO Berger heard screaming from the stairs but PO Cruz could not tell from which flight of stairs the screaming was coming. PO Cruz went down what turned out to be the wrong flight of stairs.

PO Cruz and PO Berger crossed through the hallway to the other flight of stairs. When PO Cruz and PO Berger got to the stairwell, § 87(2)(b) was already in handcuffs and all of the other officers were present. § 87(2)(b) was standing. PO Cruz did not see any officer punch or kick § 87(2)(b). He did not see any officer make contact with § 87(2)(b)'s neck or use a chokehold against him. At some point, § 87(2)(b)'s family approached. PO Cruz did not hear PO Henriquez or any other officer threaten to arrest any member of § 87(2)(b)'s family. PO Cruz and PO Henriquez brought § 87(2)(b) down the elevator after only a few seconds in the stairwell. PO Cruz did not see any injuries on § 87(2)(b) and PO Cruz did not remember whether § 87(2)(b) complained of any injuries.

PO Cruz put § 87(2)(b) in the marked prisoner van outside the location. PO Cruz did not have any difficulty placing him in the van and did not punch § 87(2)(b). PO Henriquez and PO Marrero were also in the van with PO Cruz. PO Marrero was the driver, PO Henriquez was the front passenger, PO Cruz was in the second seat, and § 87(2)(b) was in back seat. § 87(2)(b) was yelling but PO Cruz did not remember the substance. At no point did PO Cruz tell § 87(2)(b) that he wanted to fight him. PO Cruz did not have gloves on.

At the stationhouse, PO Cruz put § 87(2)(b) in a holding cell without the assistance of other officers. PO Cruz did not have any difficulties with § 87(2)(b) in the stationhouse. PO Cruz did not observe any injuries to § 87(2)(b). PO Cruz did not recall § 87(2)(b) complaining of any injuries.. § 87(2)(b) asked to go to the hospital in regards to an existing hernia. PO Cruz escorted § 87(2)(b) to the hospital in an ambulance. At the hospital, PO Cruz did not make any physical contact with § 87(2)(b). PO Cruz was not aware that § 87(2)(b) had fractured ribs or bruising near his lungs.

Witness Officer: PO HOMER HENRIQUEZ

- PO Henriquez, § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 6'2" tall, weighs 300 pounds, and has black hair and brown eyes.
- On March 4, 2013, PO Henriquez worked from 2p.m. to 10:35 p.m. He was assigned to Conditions with PO Berger and PO Zafar, was in uniform, and was assigned to a van.

Memo Book (encl. 25B-E)

At 9:17 p.m., PO Henriquez observed § 87(2)(b) with a marijuana wrap in paper in the stairway on the fifth floor. When officers attempted to arrest § 87(2)(b) he resisted violently by swinging his arms to avoid being arrested. At 9:22 p.m., PO Zafar arrested § 87(2)(b)

CCRB Testimony (encl. 26A-C)

On November 21, 2013, PO Henriquez was interviewed at the CCRB. § 87(2)(g)

The officers all walked down from the roof of the building together. PO Zafar was the first officer down and PO Henriquez was one of the last officers. § 87(2)(b) threw the marijuana and began to get up to flee. PO Zafar grabbed § 87(2)(b) before he could flee. PO Zafar and about two other officers grabbed § 87(2)(b) as he was attempting to stand up. PO Zafar held one arm and R.

§ 87(2)(b) swung his other arm and shifted his body to avoid being handcuffed.

Three members of § 87(2)(b)'s family came out into the stairwell behind the officers. PO Henriquez turned his back to the other officers and § 87(2)(b) and instructed the family to stay back. PO Henriquez instructed them to stay back three to four times and that if they continued to approach the arrest scene, they could be arrested for obstruction of governmental administration. PO Henriquez did not see PO Marrero with his arm around § 87(2)(b)'s neck or torso. PO Henriquez did not see any officer make contact with any part of § 87(2)(b)'s body other than his arms.

Other officers took § 87(2)(b) down to the van. PO Henriquez did not recall if they took the stairs or the elevator. PO Henriquez stayed in the stairwell and explained the arrest to the family. PO Henriquez did not assist in placing § 87(2)(b) in the van and did not see § 87(2)(b) outside of the building. PO Henriquez did not see PO Cruz punch § 87(2)(b) at any point.

§ 87(2)(b) did not complain of any injuries and PO Henriquez did not observe any injuries on him either at the scene or at the stationhouse. PO Henriquez did not recall the injuries noted in the command log and was not aware that § 87(2)(b) had fractured ribs.

Witness Officer: PO SCOTT BERGER

- *PO Berger, § 87(2)(b) old at the time of the interview, is a white man who stands 6' tall, weighs 190 pounds, and has brown hair and hazel eyes.*
- *On March 4, 2013, PO Berger worked from 2 p.m. to 11:35 p.m. He was assigned to Conditions with PO Cruz, was in uniform, and was assigned to a marked vehicle.*

Memo Book (encl. 33B-D)

At 9:17 p.m., § 87(2)(b) was stopped on the 6th floor staircase on the left side with PO Cruz, PO Zafar, PO Henriquez, PO Badia, PO Marrero, and Sgt. Cornier. § 87(2)(b) resisted with PO Zafar and screamed. At 9:22 p.m., PO Zafar arrested § 87(2)(b).

CCRB Testimony (encl. 34A-C)

On November 14, 2013, PO Berger was interviewed at the CCRB. § 87(2)(g)

When PO Berger, PO Cruz, and Sgt. Cornier got to § 87(2)(b) he was already in handcuffs. No officers were making physical contact with him. PO Berger did not see any officer punch or kick § 87(2)(b) or wrap their arm around § 87(2)(b). PO Berger did not remember whether § 87(2)(b) was seated, lying down, or standing.

Other officers brought § 87(2)(b) down the stairs. The officers all exited the building at the same time. PO Cruz was with PO Berger and did not transport § 87(2)(b). PO Berger did not see any officer punch § 87(2)(b). At no point did PO Berger see any injuries on § 87(2)(b) and he did not hear § 87(2)(b) complain of any injuries. PO Berger did not see the redness or bruising noted in the command log. He was not aware that § 87(2)(b) had fractured ribs or bruising near his lungs.

Witness Officer: SGT JOSEPH CORNIER

- *Sgt. Cornier, § 87(2)(b) old at the time of the incident, is a Hispanic man who stands 6' tall, weighs 183 pounds, is bald, and has brown eyes. He was observed to wear glasses.*
- *On March 4, 2013, Sgt. Cornier worked from 1:50 p.m. to 1:47 a.m. on March 5, 2013. He was the Conditions team sergeant, was in uniform, and was assigned to a marked vehicle.*

Memo Book (encl. 22B-C)

At 9:15 p.m., Sgt. Cornier conducted a vertical patrol at § 87(2)(b). At 9:22 p.m., § 87(2)(b) was under arrest. At 1:47 a.m., IAB was notified.

IAB Intake CD (encl. 23)

On March 4, 2013, Sgt. Cornier reported this incident to IAB. § 87(2)(g)

The team was doing a vertical at the location and was coming down from the roof. Before Sgt. Cornier entered the building, PO Zafar observed § 87(2)(b) rolling a marijuana cigarette in the stairwell. An officer attempted to grab § 87(2)(b)'s arm. § 87(2)(b) pulled away. The rest of the officers attempted to restrain him. § 87(2)(b) yelled, "Get the fuck off me," and other profanities. The officers were able to handcuff § 87(2)(b) with his hands above his head. § 87(2)(b) yelled for his mother. His mother and approximately two other individuals came out of an apartment on the 4th floor. They were pushed back to keep from interfering.

§ 87(2)(b) claimed that the officers punched him and used other unnecessary force. He had minor redness to the right side of his face and no other injuries - no broken bones and no stitches. § 87(2)(b) went to § 87(2)(b) after complaining about his back, which was injured in a car accident several years ago. § 87(2)(b) did not complain of any other injuries. § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) was diagnosed with minor bruises to his left arm and right side of his face.

CCRB Testimony (encl. 24A-C)

On January 28, 2014, Sgt. Cornier was interviewed at the CCRB. § 87(2)(g)

Sgt. Cornier observed the officers struggling with § 87(2)(b) in a manner he could not recall. He did not remember whether § 87(2)(b) was standing or on the ground. Sgt. Cornier and possibly other officers told § 87(2)(b) and other civilians to stay back. Sgt. Cornier did not see any officer punch or kick § 87(2)(b). He did not see any officer with their arm across § 87(2)(b)'s neck.

Outside the building, Sgt. Cornier did not see any officer punch § 87(2)(b). He did not hear any officer ask § 87(2)(b) if he wanted to fight. Sgt. Cornier did not observe any injuries on § 87(2)(b) at any point. § 87(2)(b) complained of an injury, though Sgt. Cornier could not recall what the injury was or if it was an old or new injury. § 87(2)(b) was taken to the hospital and returned fairly quickly. Sgt. Cornier did not know that § 87(2)(b) had fractured ribs or bruising near his lungs.

Medical Records

Ambulance Call Report (encl. 35; see medical records)

On March 4, 2013, § 87(2)(b) was transported via EMS. Negative for other injuries other than his complaint of pain. Transported by NYPD officer, shield number 3361.

§ 87(2)(b) (encl. 36; see medical records)

On § 87(2)(b), § 87(2)(b) was treated at § 87(2)(b). An abrasion was noted on his left arm and right forehead. It was noted that there was no need for an x-ray at the time. He was prescribed motrin.

§ 87(2)(b) (encl. 37; see medical records)

On § 87(2)(b), § 87(2)(b) was diagnosed with two fractured non-displaced left ribs (posterior-lateral (back-side)), bruising near lungs, and contusions. On § 87(2)(b), § 87(2)(b) went back to the hospital due to persistent pain from being beat up that Monday (March 4, 2013).

NYPD Documents

Command Log (encl. 39)

§ 87(2)(b) was noted to have minor redness and bruising to right side of face. He was taken to § 87(2)(b) by PO Cruz.

IAB Case File (encl. 41A-M)

The IAB case file documented bruising to § 87(2)(b)'s left side on March 9, 2013.

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
 _____).

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming malicious prosecution, excessive force, violations of Mayor Bloomberg's policies regarding possession of small quantities of marijuana, and negligent hiring and supervision and seeking an unspecified amount in excess of \$5000 as redress (encl. 43A-E). On § 87(2)(b), a 50H hearing was held.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 2A-C).

Subject Officers CCRB History

- PO Zafar and PO Badia have been members of the service for three years and there are no substantiated CCRB allegations against them (encl. 1A-B).
- PO Marrero has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 1C).
- PO Cruz has been a member of the service for three years and there are two substantiated CCRB allegations against him (encl. 1D).
 - In case number 201201037, a physical force and a stop allegation were substantiated and charges were recommended. PO Cruz received command discipline – B.

Conclusion

Identification of Subject Officers

- § 87(2)(b) described PO Marrero as a short, bald, Hispanic man. PO Marrero is a 5'5" tall, bald, Hispanic man. Sgt. Cornier, the other bald Hispanic officer, wears glasses and stands 6'

- tall. § 87(2)(g)
- PO Zafar and PO Badia admitted to making physical contact with § 87(2)(b) § 87(2)(g)
 - § 87(2)(b) identified PO Cruz in a photo and PO Cruz admitted to placing § 87(2)(b) in the police van. § 87(2)(g)

Investigation Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Allegation A – Force: PO Victor Marrero used a chokehold against § 87(2)(b)

Allegation B – Force: PO Victor Marrero used physical force against § 87(2)(b)

Allegation C – Force: PO Ahsan Zafar used physical force against § 87(2)(b)

Allegation D – Force: PO Elvis Badia used physical force against § 87(2)(b)

Allegation E – Force: PO Carlos Cruz used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Marrero put his arm around his neck, slightly restricting his breathing, and “slammed” him to the floor. He alleged that several officers, including PO Marrero, punched and kicked him in his torso and that outside the location, in the police van, PO Cruz punched him in the face. § 87(2)(b) admitted to moving his upper body around in an attempt to get out of PO Marrero’s hold.

All of the officers denied punching or kicking § 87(2)(b) or observing any other officer do so. PO Zafar described a struggle in which he and other officers made contact with various parts of § 87(2)(b) s body, but stated that no officer touched § 87(2)(b) s neck. PO Badia stated that there was a struggle and that all of the officers assisted in handcuffing § 87(2)(b) PO Marrero stated that he was in a second stairwell and was not present when PO Zafar and PO Badia initially encountered § 87(2)(b) PO Berger and PO Cruz stated that they arrived after § 87(2)(b) was handcuffed and PO Henriquez stated that he conducted crowd control and did not see what happened behind him. PO Cruz denied punching § 87(2)(b) in the van and all of the officers denied seeing him do so.

None of the other civilians witnessed the officers punch or kick § 87(2)(b) § 87(2)(b) and § 87(2)(b) stated that an officer had him knee on § 87(2)(b) s stomach and that § 87(2)(b) was on the ground. § 87(2)(b) only saw § 87(2)(b) being restrained while standing against a wall. Because they all entered the stairwell after § 87(2)(b) there are no witnesses to what occurred prior to § 87(2)(b) yelling.

The command log documents a slight injury and the medical records indicate that § 87(2)(b) did sustain an abrasion to his left arm and right forehead shortly after the incident. No x-ray was done initially but when § 87(2)(b) returned to the hospital two days later due to persisting pain, x-rays revealed fractured ribs. None of the officers were aware of the fractured ribs and did not describe actions that would account for those injuries. § 87(2)(g)

Team: 2

Investigator: _____ Jacqueline Levy _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date